

REMARKS

Claims 1-21 are pending in this application. The Examiner rejects claims 1, 10, 14 and 18 under 35 U.S.C. 112, first paragraph as failing to comply with the enablement requirement. The Examiner rejects claim 3 under 35 U.S.C. 112, second paragraph as failing to provide sufficient antecedent basis. The Examiner rejects claims 1-21 under 35 U.S.C. 103(a) as being unpatentable over Fitzgerald, U.S. Patent No. 6,421,720, ("Fitzgerald"). Applicants amend claim 3. Claims 1-21 remain in the case. Applicants add no new matter and request reconsideration.

Claim Rejections – U.S.C. § 112 ¶1

The Examiner rejects claims 1, 10, 14, and 18 under 35 U.S.C. § 112, first paragraph as failing to comply with the enablement requirement. The Examiner alleges the specification as originally filed does not describe "monitoring a bandwidth of the network preceding each frame transmission" in claim 1, the "monitored bandwidth for each portion" in claim 10, the "available bandwidth for each frame" in claim 14, and "monitoring a bandwidth of the network preceding the transmission of each portion" in claim 18.

Applicants respectfully traverse the Examiner's rejection by directing the Examiner to specific portions of specification, when read with their corresponding Figures, clearly enables one of ordinary skill in the art to make or use the subject matter of claims 1, 10, 14, and 18 without undue experimentation. See, e.g., Figure 4; Specification, page 5, line 19 – page 6, line 17 and page 4, lines 31-36. For instance, Figure 4 shows a flowchart that monitors the available transmission bandwidth of a network (box 430) prior to each transmission of data portions to the network (box 480). See also, Specification, page 5, line 19 – page 6. Since a person of skill in the art could make or use the invention without undue experimentation, the specification enables the subject matter in claims 1, 10, 14, and 18. See MPEP §2164.01. Accordingly, Applicants request that in view of the above references of the specification that the rejection be withdrawn.

Claim Rejections – U.S.C. § 112 ¶2

The Applicants amend claim 3 to obviate the Examiner's rejection.

Claim Rejections – U.S.C. § 103

The Examiner rejects claims 1-21 under 35 U.S.C. § 103(a) as being unpatentable over Fitzgerald. Applicants respectfully traverse the Examiner's rejection.

As set out in the STATEMENT OF COMMON OWNERSHIP above, the Fitzgerald patent and the instant application are both owned by the same owner at the time this invention was made. This disqualifies the Fitzgerald as a reference under 35 USC 103(a). See MPEP 706.02(I)(1)-(3) and §103(c). Accordingly, Applicants request the rejection be withdrawn the claims be allowed to issue.

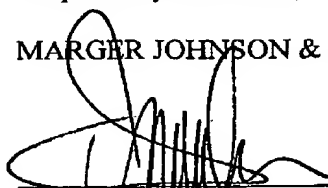
CONCLUSION

The Applicants request allowance of all claims as amended. The Applicants encourage the Examiner to telephone the undersigned at (503) 222-3613 if it appears that an interview would be helpful in advancing the case.

Customer No. 20575

Respectfully submitted,

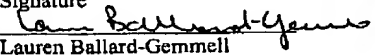
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I hereby certify that this correspondence is being transmitted to the U.S. Patent and Trademark Office via facsimile number 1-703-872-9306, on May 24, 2005.

Signature


Lauren Ballard-Gemmell